

Message

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**From:** Kupchan, Simma [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=784E0AEA94A7485FA0435CC0CF5A62A5-SASHER]  
**Sent:** 9/6/2018 6:37:48 PM  
**To:** Inkelas, Daniel CIV USARMY CEHQ (US) [Daniel.Inkelas@usace.army.mil]; Dertke, Daniel (ENRD) [Daniel.Dertke@usdoj.gov]  
**CC:** Pallesen, Reginald A. [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=368d3b434e30423cbddd2e249043c016-RPallese]; Shaw, Kyle T CIV USARMY CELRD (US) [Kyle.T.Shaw@usace.army.mil]; Dao, Thuy B CIV USARMY CELRE (US) [Thuy.B.Dao@usace.army.mil]; Carter, Michael A.(USAWIE) 2 [Michael.A.Carter@usdoj.gov]; nathan.r.menard.mil@mail.mil [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=user416f93ae]  
**Subject:** RE: Menominee Tribe/ CWA 404(g)

# Attorney Client / Ex. 5

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**From:** Janette Brimmer <[jbrimmer@earthjustice.org](mailto:jbrimmer@earthjustice.org)>

**Sent:** Tuesday, September 4, 2018 5:31 PM

**To:** Dertke, Daniel (ENRD) <[DDertke@ENRD.USDOJ.GOV](mailto:DDertke@ENRD.USDOJ.GOV)>; [rrr@dewittross.com](mailto:rrr@dewittross.com); [achrysler@wnj.com](mailto:achrysler@wnj.com); [dettinger@wnj.com](mailto:dettinger@wnj.com)

**Cc:** Stephanie Tsosie <[stsosie@earthjustice.org](mailto:stsosie@earthjustice.org)>; Lindzey Spice <[lspice@mitw.org](mailto:lspice@mitw.org)>

**Subject:** MITW v. EPA, 18-cv--000108

Dear Counsel:

Judge Griesbach's standing order is for counsel to ask opposing counsel their position on any proposed motion. Please note that we plan on filing a Motion to Amend the Complaint on behalf of Menominee Indian Tribe of Wisconsin to include two claims in addition to those stated in the original complaint.

One is a claim against EPA under the Administrative Procedure Act, that EPA's withdrawal of its objections to the Section 404 permit for the Back Forty Mine was arbitrary and capricious, an abuse of discretion and not in accordance with the law. The second claim is against both EPA and the Corps of Engineers, again under the APA, for failure to consult under the National Historic Preservation Act.

We are planning on filing the Motion to Amend within the next few days. I would appreciate you letting me know if I should represent to the court that your client either opposes, consents to, or takes no position on, the Motion to Amend. Thanks for your prompt reply.

Janette Brimmer  
Attorney  
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